Religious Freedom vs. Equality
A Case Study of the Christian Legal Society

A Senior Honors Thesis

Presented in Partial Fulfillment of the Requirements for graduation
with research distinction in Political Science in the undergraduate
colleges of The Ohio State University

by

Mitchell Hendy

The Ohio State University

May 2008

Project Advisor: Professor Lawrence Baum, Department of Political Science

For at least the past three decades The Ohio State University has maintained a policy of non-discrimination to ensure that all students, faculty, and staff are provided equal treatment. The policy has included a ban on discrimination on the basis of sexual orientation for over 20 years. This has not gone unchallenged however; in the fall of 2003 the Christian Legal Society, a religious student organization at the Moritz College of Law at The Ohio State University, sought to amend its constitution and remove the sexual orientation, creed, and religion portions from the organization's non-discrimination policy. This initiated an investigation and conflict that spanned the entire school year and created a bitter divide among the student body, faculty, and administration which was manifest in a federal lawsuit. In the end, the university created an exemption for religious organizations that allowed groups with sincerely held religious beliefs to discriminate on the basis of religion, creed, and sexual orientation (OSU press release, 10/1/04).

Here I will explore this emotional issue with three objectives. First, I will provide as complete and accurate of an account of the events as possible. Second, with the legal analyses of two Ohio State law professors as a starting point, I will give my own legal interpretation of the issues involved and will evaluate the strength of the university's case.

And third, I will attempt to reach an understanding as to why the university created the exception and how that decision was made.

I close this thesis by placing my results into the broader context of the dynamics between religion and equality and law and politics. To what degree do the events at one law school represent a national debate? Are religious freedom and sexual orientation equality inevitably in conflict? If so, where is the boundary that designates what is permissible for government action? Also, are legal arguments the sole determinant of the litigation process or do other, extra-legal, influences hold sway on important decisions of justice? It is my goal that this thesis will contribute to the evolving answers to these questions.

I. The Incident

The Ohio State University has perhaps one of the largest collections of student organizations in the country. Currently, over 800 groups have been officially registered and recognized by the university (Ohio Union website). The law school, Moritz College of Law, also has a sizeable collection. As of 2008, there are 46 student organizations registered with the university and law school (Moritz student organizations website). These organizations run the gamut of student life and represent clusters of students with similar political, cultural, professional, religious, or social interests. At the root of this conflict there are two such organizations deserving focus.

The Christian Legal Society is a national religious law student and attorney organization that has chapters at law schools across the United States. According to the OSU chapter's bylaws, the group's mission is to "maintain a vibrant Christian Law

Fellowship on the (s)chool's campus which enables its members, individually and as a group, to love the Lord with their whole beings—hearts, souls, and minds – and to love their neighbors as themselves" (CLS Bylaws, Art. II.). The group seeks to deepen their religious faith, share that faith with the campus, and come to understand "what…it mean(s) to be a Christian in law" (Id.).

Another student organization at Moritz is known as the OutLaws. The OutLaws are dedicated to raising awareness of sexual orientation and gender identity legal issues (Moritz website). Brookes Hammock, one of the OutLaws' co-chairs for the 2008-09 school year, described the group as having four main missions: social, academic, professional, and community. While they sometimes have purely social events, the OutLaws also sponsor seminars and discussions that address issues such as same-sex adoption (Email from Brookes Hammock, 5/19/08). Membership in the group typically hovers between ten to twenty law students each year and primarily consists of gay and lesbian students.

While the origins of this conflict are somewhat unclear and contested, it seems as though tension between these two groups was responsible for creating the situation.[1] Students who were part of OutLaws allege that the CLS tried to stir up controversy and made their intentions of altering their non-discrimination policy publicly known (Interview with Chris Geidner, 3/20/08). They suggest that the national organization of the CLS

[1] It must be noted that many lay people who are only superficially aware of the ensuing conflict believe that this was essentially a "Gay v. Christian" issue. As will be seen below in the discussion of the legal issues, I believe it is unfair to characterize it in this fashion. Ultimately this issue is between two interpretations of the Constitution and it does a severe injustice to sensationalize it into stereotypical conflicts. Nonetheless, it was a Christian organization that sought to amend its policy and a GLBT organization that challenged it.

attempted to create such controversies in public law schools across the nation in order to force the issue into the courts. Other accounts suggest that it was two OutLaw students who initiated the claim by submitting a complaint to the law school's administration (*Christian Legal Society v. Holbrook,* Complaint, 9). What is clear, however, is that the university became officially involved after Chris Geidner, a co-president of the OutLaw group, sent a complaint to the law school's assistant dean. In his complaint Mr. Geidner informed the administration that the CLS was in breach of the university's non-discrimination policy, as the CLS prohibited gay students from becoming full voting members or officers.[2] According to the complaint filed in federal court by the Christian Legal Society, after these concerns were raised the administration spoke with the then-president of the CLS to determine if there was in fact a violation. The results of that conversation are still somewhat unclear, but the formal complaint stated that the organization was in contact with the Ohio Union, the university organization charged with overseeing student groups, and was informed that a non-discrimination policy that failed to include the sexual orientation provision would disqualify the CLS from recognition and funding (Id.).

---

[2] There are a number of non-discrimination policies in effect at OSU. The Office of Human Resources maintains Policy 1.10, which applies to all faculty, staff, student employees and applicants. It states, "Discrimination against any individual based upon protected status, which is defined as age, color, disability, gender identity or expression, national origin, race, religion, sex, sexual orientation, or veteran status, is prohibited." The Office of Student Activities maintains a handbook detailing the registration policy for student organizations. It begins: "In order for student organizations to be recognized and registered on campus, the following guidelines must be met: 1. Discrimination on the basis of race, color, creed, religion, sexual orientation, national origin, sex, age, handicap, Vietnam-era veteran status is prohibited." While there is some argument as to which policies apply to student groups, it is most commonly thought that as student organizations must comply with all university policies, both of these policies apply.

Date	Event
October 23, 2003	Two students submit inquiries about CLS to an assistant dean at the law school
October 27	The Ohio Union informs CLS that removing the sexual orientation, religion, and creed provisions from the policy in the organization's bylaws would be grounds for revocation of official recognition, funding, and access to facilities
November 3	OutLaws formally asks Dean Nancy Rogers to revoke CLS' recognition due to its non-compliance with OSU policies
November 10	CLS amends its constitution, removing the three provisions from the statement of non-discrimination and adding a prohibition of homosexual conduct for officers
November 12	The Student Bar Association passes a resolution affirming its support for all of OSU's non-discrimination policy provisions
November 13	CLS sends its amended constitution to the Office of Student Activities for approval
November 24	CLS sends demand letter to OSU wanting assurance that CLS would not lose recognition
December 4	OSU responds, explaining that the university has opened a 90-day review of CLS and will evaluate the policy. CLS is to have recognition in the meantime
March 2, 2004	OSU announces CLS will maintain recognition for the remainder of the 2003-04 school year, but no final decision has been reached
March 12	CLS files a complaint in Federal District Court for the Southern District of Ohio
May 18	OSU files a reply to the complaint that denies the allegations
September 30	OSU announces revised policies for student organizations. Groups with "sincerely held religious beliefs" may discriminate on the basis of those beliefs
October 12	Thirty professors and other faculty members of OSU's law school sign and circulate a letter denouncing the university's decision

Table 1: Timeline of events. ***Sources: Complaint, Faculty letter.***

Despite this warning, on November 12, 2003 the CLS voted to amend its constitution and formally removed the categories of religion, creed, and sexual orientation from its statement of non-discrimination (*Holbrook* Complaint, 11). This newly adopted set of bylaws stated that "in the conduct of all aspects of its activities, the Chapter shall not discriminate on the basis of age, disability, color, national origin, race, sex, or veteran status" (CLS Bylaws, 3). Additionally, in describing the role and selection of officers, the bylaws stated that "officers must abstain from 'acts of the sinful nature' (Galatians 5:19-21), including fornication, adultery, and homosexual conduct" (Id., 2). This new constitution was then sent to the university as part of the organization's application to renew its status as an official organization.

The university did not take immediate action on the constitution; rather, it launched a 90-day investigation during which the CLS had provisional recognition. During this time the environment at the law school was rather tense. In talking with two law professors who were actively involved with the legal issues in this case, I learned that there was a significant divide within the faculty and student body. David Goldberger, a Constitutional Law Professor at Moritz, felt ostracized by most of the faculty because of his support for the CLS (Interview with David Goldberger, 4/9/2008). Similarly Ruth Colker, another Constitutional Law Professor and one of Mr. Goldberger's colleagues, explained that some of her relationships with close friends were strained as a result of her active efforts to enforce the non-discrimination policy against the CLS. Additionally she saw a student body that was on edge, as both sides of the conflict were accused of harassment (Interview with Ruth Colker, 3/24/08).

While tensions mounted in the classrooms, the possibility of a lawsuit continued to loom as the university conducted its investigation. Official documents from this review were not available, but both Professors Colker and Goldberger supplied legal memos that outlined their respective cases. These memos were furnished to Dean Rogers and were almost assuredly available to OSU's legal counsel. At the close of the 90 days the university sent the national CLS organization a letter that explained their finding; the CLS would continue to be recognized throughout the remainder of the school year, but the university was not yet prepared to settle on a final decision regarding the modified non-discrimination policy (Shumate letter, March 2, 2004). The uncertainty of the future status of the CLS was not acceptable to the organization; on March 12, 2004 the national organization filed suit in the United States District Court for the Southern District of Ohio against Ohio State's President, Karen Holbrook. The complaint outlined the events that led up to the suit and charged that the university violated three of the Christian Legal Society's First Amendment rights: Freedom of Expressive Association, Freedom of Speech, and Free Exercise of Religion.

Unfortunately, there were not many court documents filed in this case, but what is known is that on May 18 the university filed its response to the complaint. The response admitted most of the factual account of the complaint but denied any wrongdoing and asserted several defenses. Notices of depositions were filed with the court; however, there are no records indicating that these depositions actually took place. On November 19, 2004 the case was closed with a stipulation of dismissal, as there was no longer any justiciable issue for the court to resolve (*Holbrook,* Stipulation of Dismissal).

Clearly, only a small portion of this conflict took place within the legal environment of the courts. After the reply was filed the university continued to weigh the legal issues in the case. Sadly, the university official most involved in this case, Vice President of Student Affairs, Bill Hall, is now deceased. Richard Hollingsworth, the current Vice President, was serving as an Associate Vice President of Student Affairs at the time of these events and was able to provide information regarding Vice President Hall's decision-making process. According to Hollingsworth, there was little opportunity for full discussion on campus after the lawsuit was filed. The Council on Student Affairs created a study group to examine the policies of recognizing student organizations (Interview with Richard Hollingsworth, 4/14/08). Ultimately, that committee voted to keep the non-discrimination policy as written and have it enforced against all student organizations equally. Vice President Hollingsworth added that in addition to this committee, OSU reached out to universities that faced similar conflicts and considered all possible alternatives.[3] The two alternatives Hollingsworth specifically mentioned included either waiting for other court cases to resolve the legal issues or possibly creating a more limited exemption that only applied to officers in the student organizations (Id.).

In the end, though, the university announced on September 30, 2004 that it created an exemption to the non-discrimination policy. Organizations formed to promote "sincerely held religious beliefs" would not have to abide by the religion, creed, or sexual orientation provisions of the policy (OSU press release, 10/1/04). Vice President Hollingsworth has

---

[3] Ohio State University was not alone in facing legal challenges in regards to non-discrimination policies. The CLS filed suit against at least two other public universities. These cases will be discussed later in this thesis.

said that Bill Hall was the person ultimately responsible for making the decision and that it was a very difficult process. According to prepared remarks for his address to the Council on Student Affairs, Hall felt torn in making the decision. He explained that although the CSA committee supported the continuation of the policy, "after reviewing the situation further throughout the summer, (he) decided that it was in the best interest of the university to allow groups that are formed to foster or affirm sincerely held religious beliefs to adopt a non-discrimination statement consistent with those beliefs"(Hall's Address to the CSA). He went on to explain that creating this exemption was a "very, very difficult decision for (him), because (he is) very personally committed to non-discrimination. However (he) also deeply respect(s) the rights of individuals to form groups based on shared religious beliefs." He tried to make it very clear that the exemption was limited to groups formed to foster sincerely held religious beliefs and that it was in no way meant to represent a retreat by the university in regards to providing equal rights to the gay community (Hall's Address to the CSA).

Despite these well-intentioned remarks, there was a rather strong backlash against the university's decision. In a circulated letter dated October 12, 2004, thirty faculty members of the law school expressed their deep disappointment in the decision and predicted "this new policy will make our gay, lesbian, and bisexual students second-class citizens in the movement towards equality" (Colker et al.). Students also protested the decision, and the student newspaper, The Lantern, ran an editorial chastising the university for stepping on students' rights to equality. The article ended with a call to action stating that "such non-inclusiveness has no place in the fabric of OSU campus life and should be protested to the best of each student's ability" (The Lantern, 10/4/04).

What made the university decide to settle this case and create the exemption for religious student organizations? A complete answer to that question relies in part on a thorough legal analysis of the issues. Next I will look at the three fundamental issues in this case, providing background and legal precedents for both sides. I will then try to evaluate the strength of the university's legal argument to continue with the non-discrimination policy.

II. Legal Analysis

This incident involved several legal issues, almost all of which arose out of the First Amendment of The United States Constitution. The Christian Legal Society had essentially advanced three fundamental legal claims.[4] First, the First Amendment protects individuals' and groups' freedom of association; an organization has a right to choose who can and cannot become members. Second, the same amendment protects the freedom of speech; OSU could not single out or retaliate against the CLS because of the group's expressed viewpoint. Finally, the amendment also protects the group's right to freely exercise their religious beliefs. Here I will discuss each of these issues in turn.

[4] The actual complaint filed in District Court contains six counts of violations. In addition to the three discussed here, the CLS cited Establishment Clause, Equal Protection Clause, and State Free Exercise Clause violations. The first two of these were widely thought to have little legal merit and are therefore not analyzed here. The State Free Exercise Clause argument largely reflects the United States Constitutional arguments discussed in this thesis but is tailored to the constitution of the State of Ohio and the state's case law.

As a preliminary matter, it might be useful to first dispel some possible mistaken assumptions about the legal issues in this case. Many lay people may have the view that the university should be empowered to put any reasonable restrictions on the money. This belief goes along the line of "He who pays the piper calls the tune." The university is willingly providing money to student organizations without any obligation to do so; thus, some think, there should be no limits on the conditions the university requires groups to abide by. Unfortunately, this view is incompatible with the law. Under the doctrine of unconstitutional conditions, "the government may not require a person to give up a constitutional right… in exchange for a discretionary benefit conferred by the government" (*Dolan v. City of Tigard*, 385). As applied to this case, this doctrine means that OSU cannot condition funding and recognition on the group's waiver of the First Amendment protections mentioned above. Therefore the proper analysis requires first determining whether or not an infringement of rights occurred. If so, the doctrine of unconstitutional conditions may apply. If not, the doctrine does not apply and the university's policy is constitutional.

A second assumption to clarify and correct is that a case like this could have arisen at any law school in the country. This is only half true; the Christian Legal Society could raise these claims against any *public* law school. As stated above, the most fundamental arguments for the CLS involve the First Amendment of the Constitution. Those protections are only enforced against the federal and, through incorporation, state governments. Public schools such as The Ohio State University serve as agents as the state and their students receive these constitutional protections. Private law schools are not subject to these restrictions and would only have to comply with any applicable state and federal laws.

Because of this distinction, it is no surprise that the Christian Legal Society chose to bring their case against public law schools like Ohio State.

The Christian Legal Society's most vigorously asserted violation revolved around the First Amendment's protection of Freedom of Expressive Association. This freedom is not found in so many words in the First Amendment itself, but rather has been carved out in various Supreme Court rulings. Beginning in cases during the civil rights movements of the 1950s and '60s, the Court found that there are protections for memberships in associations (The Constitution of the United States, Analysis and Interpretation, 1115). As it pertains to the CLS, the first relevant venture into this constitutional protection came in *Roberts v. United States Jaycees* (1984). Here, the Court examined the United States Jaycees, a national organization that was dedicated to promoting values in young men. After two chapters in Minnesota began admitting women to full membership, the national organization challenged a state public accommodations law prohibiting discrimination on the basis of gender and other classes. The question before the Court was whether or not the state law can be applied to the Jaycees, forcing them to accept women as members. The Court ultimately unanimously answered that question in the affirmative, but only after it recognized that organizations have a right to associate:

> An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. (*Roberts*, 468 U.S. 609, 622)

As it pertains to the current case, this suggested that the Christian Legal Society had a right to choose who it would associate with in order to preserve the group's mission and

Issues	Supreme Court Precedents
Freedom of Expressive Association	*Roberts v. United States Jaycees* – Groups have a right to associate, but this right may be curtailed by compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through less restrictive means
	Hurley v. Irish American Gay, Lesbian, and Bisexual Group of Boston – Parade organizers have the right to choose who may participate in the parade. "The speaker has the right to control his message"
	Boy Scouts v. Dale – The Boy Scouts may expel an openly gay scoutmaster, as his presence significantly burdens the organization's ability to maintain its message.
Freedom of Speech	*Rosenberger v. Rector and Visitors of the University of Virginia* – A university that funds student newspapers must also fund a paper presenting the religious perspective. To not fund the religious paper would constitute impermissible viewpoint discrimination.
	University of Wisconsin v. Southworth – Student activity fee programs do not run afoul of the First Amendment provided that they do not engage in viewpoint discrimination.
	United States v. O'Brien – Provides the constitutional test for regulations directed towards conduct that incidentally restricts speech. The regulation must be within the power of government; it must further an important or substantial state interest; the interest must be unrelated to the suppression of ideas; and the restriction must be no greater than that which is essential to the furtherance of that interest.
Free Exercise of Religion	*Employment Division v. Smith* – A neutral law of general application may prohibit religious conduct without a compelling state interest.

Table 2: The legal issues and relevant Supreme Court decisions

common goals. But in *Roberts* the Court went on to explain that this right of free association is not absolute and may be trumped "by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms" (623). Furthermore, the Court ruled

that the state's desire to abolish gender discrimination was certainly not related to the suppression of ideas and was a compelling state interest "of the highest order" (624).

Based on *Roberts*, it would appear as though the CLS faced a similar ruling in which the courts would deem the university's non-discrimination policy a reasonable method to further the compelling state interest of eradicating discrimination on the basis of all sorts of classes. Yet in the years in between this decision and the incident at OSU the Court issued two other rulings that directly pertained to sexual orientation and the freedom of association. The rulings in *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston* (1995) and *Boy Scouts v. Dale* (2000) severely undercut the finding in *Jaycees* and suggest that the Court is currently not as receptive to sexual orientation discrimination claims as it was to gender discrimination claims in the 1980s.

In *Hurley,* Boston's Irish-American organization sought to exclude a GLBT group from participating in its annual parade. The organization challenged the Massachusetts public accommodations law prohibiting discrimination on the basis of sexual orientation. As the Court analyzed the law in regards to its effect on First Amendment protections it noted that

> Provisions like these are well within the State's usual power to enact when a legislature has reason to believe that a given group is the target of discrimination, and they do not, as a general matter, violate the First or Fourteenth Amendments. Nor is this statute unusual in any obvious way, since it does not, on its face, target speech or discriminate on the basis of its content, the focal point of its prohibition being rather on the act of discriminating against individuals in the provision of publicly available goods, privileges, and services on the proscribed grounds. (*Hurley,* 515 U.S. 557, 572)

While the Court accepted the Massachusetts law, it ultimately ruled unanimously that the organization couldn't be forced to accept the GLBT group. In explaining that the valid law

was applied in a "peculiar" way, the Court stated that by forcing a parade organizer to express an undesired message, the state would unconstitutionally interfere with the group's First Amendment rights as "this use of the State's power violates the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message" (Id., 573). As seen in these quotes, this case highlighted the intersection of the freedom of expressive association and the freedom of speech.

Similarly, in *Dale* the Court ruled that the Boy Scouts could exclude a gay adult member because the forced inclusion of such an individual would violate the organization's ability to express their views on homosexuality. James Dale was virtually a lifelong scout, but when it became known that he was an openly gay activist, the organization rescinded his membership. The Court ruled that such an expulsion was in line with the group's freedom of association. The New Jersey public accommodations law that prohibited discrimination on the basis of sexual orientation could not be applied to the Boy Scouts, as it would impose a serious burden on their ability to express their views (*Dale,* 653). This conclusion was determined as a result of a three-prong test. First, the group must partake in expressive association. Second, the state regulation must significantly affect the group's ability to express its viewpoints. Third, the Court must determine that the regulation does not justify the intrusion on the right to expressive association.

Dale remains a rather contested ruling. The Court decided the case by the narrowest margin of 5 to 4. As David Goldberger points out, the dissenters did not disagree with the majority's opinion that expressive associations may not have to follow state non-discrimination laws. Rather, the dissenters argued that the majority opinion skewed the facts of the case and exaggerated the degree to which the Boy Scouts actually held and

expressed genuine beliefs and opinions on homosexuality (Goldberger memo, 4). It is unclear whether these dissenters would express this same view on the Christian Legal Society.

Taken together, though, *Dale* and *Hurley* seem to severely curtail the state's ability to protect against sexual orientation discrimination. The crux of the *Roberts* opinion that the government is permitted to infringe on freedom of association rights when it does so in order to advance a compelling state interest has since been replaced by the Court's emphasis in *Hurley* and *Dale* on disallowing states from imposing severe burdens on organizations' right to expressive association.

With these more recent developments in freedom of association case law, there was a sound argument that the CLS could not be forced to include members it did not wish to have. This position was articulated in Professor Goldberger's memo to Dean Rogers (Goldberger memo, 3-4). Yet despite *Dale* and *Hurley*, I believe that Ohio State had a strong legal argument in support of application of the non-discrimination policy over the CLS' freedom of association rights. *Dale* and *Hurley* established that state laws cannot force an organization to associate with particular individuals if doing so would force the group to alter its message or would interfere with the ideas the group seeks to express. The incident at OSU did not entail such a forced inclusion, however. As Professor Colker noted in her memo to the law school administration, the university's policy of non-discrimination did not force any group to accept unwanted members. Rather it conditioned official recognition and receiving university funds on abiding by the university's rules. Regardless of the organization's compliance with the nondiscrimination policy, the Christian Legal Society was free to continue to meet and express their views; the group would simply forfeit

official recognition and privileges if it failed to adhere to the university's policy of nondiscrimination (Colker memo, 3). This scenario was quite different from the case in *Dale* where, had the Court ruled the other way, the Boy Scouts would have faced a serious ultimatum: accept Dale as a scoutmaster or risk being prohibited from existing at all in the state of New Jersey for failing to follow state public accommodation laws requiring non-discrimination. Likewise, *Hurley* did not apply, as the CLS would have been free to publicly express its views regardless of official university recognition. Because the university is not seeking to compel the Christian Legal Society to accept any individual regardless of that person's effect on the group's ability to express its message, there was a strong argument to be made that OSU's enforcement of the non-discrimination policy would not violate the CLS' First Amendment Freedom of Association rights.

The second count against the university was the denial of Free Speech rights. In investigating this claim, the starting point is to analyze the funding structure of the student organization program.

At the time of the incident involving the Christian Legal Society, The Ohio State University was just beginning to implement a student activity fee program that provided funding for student organizations and entertainment events. At its inception, the student activity fee was charged to all new students at the university, both undergraduate and graduate/professional. The university subsidized the money that would have been collected from returning students (Ohio Union website). Once collected, the money was in turn disbursed to the varying student organizations that applied for funding. Although the

program began at Ohio State in the fall of 2003, other universities across the country had already been using a similar form of fees to fund student organizations.

Such programs, however, have been subjected to lawsuits on the ground that they violate the students' First Amendment rights. The Supreme Court decided the most important of these cases in March 2000 in the case of *Board of Regents of the University of Wisconsin v. Southworth* (2000). In *Southworth,* students at the University of Wisconsin's Madison campus filed suit, claiming that the university's student activity fee violated their First Amendment rights as the program took the students' money and used it to fund organizations that "engage in political and ideological expression offensive to (the students') personal beliefs" (217). While the lower courts held that such a program violated the students' rights because it compelled students to fund speech they disagreed with, the Supreme Court unanimously voted to reverse the lower courts' holdings and ruled that such student activity fees did not violate the First Amendment as long as the university did not engage in viewpoint discrimination while choosing which groups to fund.

There is an important distinction here between content discrimination and viewpoint discrimination. Whereas content discrimination refers to banning discussion of a certain type of action (such as abortion), viewpoint discrimination bans only certain perspectives (such as the pro-choice view). This distinction was most appropriately laid out in an earlier case involving a religious publication at the University of Virginia. In *Rosenberger v. Rector and Visitors of the University of Virginia* (1995) the Court ruled by a slim majority of 5 to 4 that the state school had to provide funding for a religious student newspaper because it provided similar funding for other secular student publications. The

Court explained that when a university officially recognized student organizations and granted them privileges like access to facilities and funding the school created a limited public forum, a distinction that conveys a legal responsibility on the school to preserve the students' First Amendment protections of freedom of speech. Once this limited public forum had been established, the school could exclude speech on the basis of its content, but not because of its viewpoint. For example, it may be possible for the state to prohibit groups that speak about abortion, but it may not permit a group that is pro-life while denying recognition to a group that is pro-choice. *Rosenberger* sets forth a rather clear distinction in which it states:

> In determining whether the state is acting to preserve the limits of the forum it has created so that the exclusion of a class of speech is legitimate, (there is) a distinction between, on the one hand, content discrimination, which may be permissible if it preserves the purposes of that limited forum, and, on the other hand, viewpoint discrimination, which is presumed impermissible when directed against speech otherwise within the forum's limitations. (*Rosenberger,* 515 U.S. 819, 829-830)

An earlier case that exemplifies this distinction was *Lamb's Chapel v. Center Moriches Union Free School Dist.* (1993), where the Court ruled that it was impermissible for the school to open up its facilities for public use in the screening of child rearing movies but to deny a religious group from presenting a film that portrayed a religious perspective of child rearing.

This example ties back into *Southworth* and the case at hand, as it must now be determined if the student activity fee program at Ohio State was viewpoint neutral. *Southworth* established that Ohio State was certainly allowed to collect the fee and distribute it to student organizations so long as there was no viewpoint discrimination in the manner in which the organizations were recognized and provided funding. As

established in *Rosenberger*, Ohio State could not discriminate against religious organizations in choosing which groups to recognize. Thus, OSU could not deny CLS recognition simply on the basis of the group's espousal of religious viewpoints.

But the case at hand involved an issue with the student activity fee that was more intricate than what was raised about the University of Virginia's plan in *Rosenberger*. Here there was no clear ban on promoting religious views that was deemed unconstitutional by the Court. Rather this case revolved around the university's requirement that the organizations abided by the non-discrimination policy.

This requirement, however, was aimed at protecting one of the original goals of establishing the fee program: the desire to promote a diverse environment. The university sought to ensure that student groups were accepting of all students in order to foster the inclusiveness it deemed necessary to create a high quality of student life on campus. As such, this non-discrimination policy likely would have fallen under the content discrimination category that *Rosenberger* deemed permissible. Furthermore, there was a strong argument that Ohio State's non-discrimination requirement, unlike the program at the University of Virginia, was not limiting any student's freedom of speech, as it was directed towards prohibiting a certain class of conduct (discrimination against homosexuals) and not speech (presenting a religious view) (Colker memo, 7). Based on this, I argue that the student activity fee program and the non-discrimination requirement were, in general, not at odds with the Constitution's free speech protections.

The final relevant legal argument that I will analyze relates to the First Amendment's protections for the free exercise of religion. The First Amendment begins

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…" (U.S. Const. amend. I). Here there are two important provisions: the Establishment Clause, and the Free Exercise Clause. While the CLS did cite the former as a claim in their complaint, the Establishment Clause was largely a peripheral argument. Instead I will focus on the Free Exercise claim.

The Free Exercise Clause has been the subject of a myriad of Supreme Court cases and, like most instances of government interaction with religion, has produced little in the way of clear guidelines. The essence of the protection is that the state cannot interfere with an individual's ability to practice his or her religious beliefs. But what happens when the state passes a regulation that is not aimed at proscribing religious exercise but has an incidental effect of just that? The Court answered this question most definitively in *Employment Division, Oregon Department of Human Resources v. Smith* (1990)[5]. In *Smith,* two employees of a drug rehabilitation center were fired after they ingested peyote as part of a religious sacrament. Because of a state controlled-substances act, the firings were deemed work-related and thus excluded the employees from unemployment benefits (*Smith*, 874). After much back and forth between the Supreme Court, the Oregon Supreme Court, and the lower courts, the United States Supreme Court finally decided by a vote of 6 to 3 that the Oregon law was constitutionally permissible and did not violate the

[5] *Smith* remains one of the most contested rulings in religious exercise jurisprudence. In reaction to the Court's ruling here, Congress passed the Religious Freedom Restoration Act of 1993 (RFRA) that sought to effectively overturn *Smith* and create a law that was more favorable to religious exercise. The Supreme Court rebuked this attempt in *City of Boerne v. Flores* (1997) and ruled that the Act was unconstitutional as it applies to the states. It is still possible that the RFRA is valid law in relation to the Federal government, but as this case with the CLS dealt with mainly state laws, *Smith* is the appropriate precedent to analyze (The Constitution of the United States, Analysis and Interpretation, 1074).

employees' free exercise rights. In a reversal from previous decisions, the Court set forth a new standard by which to evaluate free exercise interference. In his opinion for the Court, Justice Scalia explained that the restrictive effect that a neutral and generally applicable law may have on religious exercise is irrelevant in evaluating the law's constitutionality. Additionally, such a law does not need to be supported by a compelling state interest (*Smith,* 885-86).

The application of *Smith* is arguably much more straightforward to the CLS case than the precedents for expressive association and speech. The university established a neutral and generally applicable policy of non-discrimination. The policy was enforced against all student organizations equally and was clearly not designed to restrict religious exercise. The CLS could have claimed that the policy had the incidental effect of burdening their religious exercise, but under *Smith* that consideration is immaterial as the regulation served a substantial state interest – eradicating discrimination in the educational environment. The only way the CLS could have prevailed on this argument would have been to succeed in challenging the applicability of *Smith.* Arguing that the case at hand was a "hybrid" in which there was substantial interaction between both the free exercise protections and other First Amendment provisions, the CLS could have fought the use of the *Smith* test in this case. As will be seen below, this argument would likely not have succeeded.

Having evaluated the Supreme Court precedents that would have guided a ruling in the CLS case at OSU, I am now in a position to offer my analysis of the legal arguments. Before doing so, however, it would be prudent to first look at the context of this case. In

2003, when this issue was first brought up at OSU, the Christian Legal Society was undertaking similar movements at public law schools across the country with similar non-discrimination policies. At the time that the CLS had filed suit against OSU there were no rulings on this particular issue. In 2006, however, a Federal District Court in California issued a ruling on the very same issue that faced OSU. This case involved the CLS chapter at the University of California Hastings College of Law.[6] Although this case was obviously not available to the parties involved in the dispute at OSU, I find the District Court's opinion to be informative as to how such a case may have unfolded in Columbus.

In *Christian Legal Society v. Kane* (N.D. Cal. 2006), the District Court granted a motion for summary judgment in favor of Hastings Law School. The case involved a fact pattern almost identical to the one at OSU; the religious student group voted to affiliate with the national organization and adopted a membership policy that was inconsistent with the university's non-discrimination policy (*Kane*, 5). The Court focused primarily on the CLS' free speech, expressive association, and free exercise claims. [7]

First, in regards to the free speech claim, the District Court held that the non-discrimination policy regulated conduct, and not speech (Id., 8). The Court cited the Supreme Court's decision in *Hurley* as evidence that non-discrimination laws are generally

---

[6] At least one other university, Southern Illinois University, went to federal court against the Christian Legal Society in this matter. After the Seventh Circuit Court of Appeals granted a preliminary injunction and ruled that CLS would likely succeed on its expressive association and free speech claims, SIU settled their case in May 2007, permitting the CLS to maintain their membership policies (*Christian Legal Society v. Walker* 7th Cir. 2006).

[7] The opinion concluded by summarily dismissing the CLS' claim of an Equal Protection violation, citing a lack of evidence to suggest the CLS was being treated differently from other groups and any discriminatory intent (*Kane*, 40).

targeted towards conduct, not speech. In *Hurley* the law was applied peculiarly and had an effect of regulating speech. The District Court distinguished this from the CLS case, stating that "(i)n contrast to *Hurley*, CLS is not excluding certain students who wish to make a particular statement, but rather, CLS is excluding all students who are lesbian, gay, bisexual or not orthodox Christian" (Id., 11). Based on the determination that the non-discrimination policy is directed towards conduct and not speech, the Court's primary finding did not even reach to *Rosenberger*, but rather found the policy permissible under *United States v. O'Brien* (1968). [8] The opinion went on to find that even if the appeals courts determine *O'Brien* is inapplicable, the policy would pass muster because it was viewpoint neutral under *Rosenberger* and *Southworth* (*Kane,* 16-17).

Second, the District Court found no violation of the CLS' freedom of expressive association. The opinion ruled that *Dale* and *Roberts* were inapplicable as those cases involved the forced inclusion of members the group did not desire. In regards to the CLS, the Court found that "Hastings is not directly ordering CLS to admit certain students. Rather, Hastings has merely placed conditions on using aspects of its campus as a forum and providing subsidies to organizations. If CLS wishes to participate in the forum and be eligible to receive funds, it must comply with Hastings' Nondiscrimination Policy" (Id., 24). Again, the ruling covered all bases by pointing out that even applying *Dale* to the CLS case would result in the same decision. The District Court did not see evidence that forcing the

---

[8] *O'Brien* set forth the standard of evaluating regulations that have incidental effects of violating free speech protections. The regulation is valid provided that it is within the power of government; it furthers an important state interest; it is unrelated to the suppression of expression; and the restriction on First Amendment freedoms is no greater than necessary to the furtherance of the interest (*O'Brien,* 377).

CLS to include gay students would impair the group's ability to express its message (Id., 33).

Third, in regards to the Free Exercise claim, the District Court found *Smith* to be applicable and did not accept the CLS' argument that it was a hybrid case involving substantial interaction of several First Amendment provisions (Id., 36-39). The Court found the non-discrimination policy to be neutral and of general applicability and thus not warranting strict scrutiny, a much higher standard of review (Id., 37).

As the *Kane* Court found no constitutional violations of the CLS' rights, the opinion concluded by dismissing the CLS' claim that the doctrine of unconstitutional conditions applied (Id., 41). Having determined that there was no constitutional issue with Hastings' policy and that the doctrine of unconstitutional conditions was inapplicable, the *Kane* decision granted the school's cross-motion for summary judgment and ruled against CLS' claims in their entirety. [9]

Based on the foregoing legal background and analysis, and especially in light of the District Court's ruling in *Kane*, I believe that the university had a strong legal position to continue to enforce the non-discrimination policy against the Christian Legal Society. There is no way to attach any level of certainty to how this case would have been decided by the

[9] Currently, the District Court's opinion is on appeal and awaiting a hearing before the Ninth Circuit Court of Appeals. While Ryan Visser submitted a note in the Hamline Law Review that suggested the *Kane* decision erred in finding *Dale* inapplicable, I find his contentions unconvincing; he essentially wrote off the fact that the CLS could easily exist without university recognition (making *Dale* inapplicable). His claim that the *Kane* court erred in finding the policy viewpoint neutral is potentially more viable and will likely be considered by the Ninth Circuit (Visser, 475-80).

Federal District Court or, perhaps on appeal, even the United States Supreme Court. Suffice to say, this was a matter in which reasonable minds could differ. To that effect, it is considerably less important whether or not one agrees with my estimation of the relative strength of the two sides. Instead, what is of paramount importance to this thesis is an appreciation of how both the CLS and the university had strong arguments to buttress their claims. Obviously, had the legal precedent in this issue been clearly in favor of a ruling for the Christian Legal Society, it would have made financial and legal sense for the university to avoid going to trial. But this was not the case; according to Vice President Rich Hollingsworth, the legal arguments above were well known to then-Vice President Bill Hall and OSU's legal counsel. Having accepted the fact that the law was unclear and the university had strong arguments to make, what is now of considerable interest is the university's decision not to pursue these legal arguments against the CLS in court, but instead to grant religious organizations an exemption from the contested policy.

III. Evaluating the Decision-Making Process

Before diving into the university's decision-making process, I will discuss the methods and limitations of the research for this section. In the course of researching why the university made the exemption for religious groups I gathered several newspaper and journal articles, interviewed some of the active parties in the case, and attempted to secure corroborating primary documents. My interviews were particularly helpful in this stage, as the individuals I talked with shared some of their perspectives of the process. Taking their thoughts as leads, I then tried to uncover supporting evidence. Unfortunately, despite these efforts, little solid information was to be found regarding the university's actual policy

deliberations. I requested interviews with seemingly key figures such as Nancy Rogers, the dean of the law school, and Karen Holbrook, the president of The Ohio State University at the time. Both of these individuals responded to the effect that they were not very involved in the decision. The current Vice President of Student Affairs, Rich Hollingsworth, stated that the late Bill Hall was ultimately responsible for making the decision. Hollingsworth said that "under the Faculty Rules the Vice President of Student Affairs is assigned the responsibility for making regulations related to student activities" (Email from Richard Hollingsworth, 4/11/08). [10]

While Hollingsworth provided me with a copy of Hall's address to the Council on Student Affairs regarding his decision, there is understandably no substitute for asking questions to the man who made the decision. Vice President Hall's unfortunate death in 2005, along with the sensitivity of this issue, confidentiality considerations, and time constraints, all represent the considerable limitations of this thesis' ability to report on the decision-making process. In light of these limitations, this section, as opposed to the previous pages, will consist much more of my reasoned estimations of the considerations that took place as Vice President Hall and other university officials debated the non-discrimination policy. I cite all the evidence I collected, but when such evidence is not

[10] It is certainly questionable that a policy decision of this magnitude would have been decided without significant influence and input from the top levels of the administration. Had I more time and ability to secure internal sources, I would have been very interested in evaluating the degree to which President Holbrook and Dean Rogers actually were involved in the decision. While I will leave it to the reader to draw inferences, I believe that the forthcoming factors and influences would have been considered regardless of the identity of the person who ultimately made the decision.

available I make clear that my claims represent my best conjecture based on the context of the situation.

Beginning with what is certainly known, on September 30, 2004 the Ohio State University revised the policy guidelines for student organizations. After stating that all organizations must include a statement of non-discrimination on the basis of age, color, disability, gender identity or expression, national origin, race, religion, sex, sexual orientation, or veteran status, the new policy added that "a student organization formed to foster or affirm the sincerely held religious beliefs of its members may adopt a nondiscrimination statement that is consistent with those beliefs" (Ohio Union Website). This decision, as stated earlier, gave the Christian Legal Society the precise exemption they were seeking. While no documents or interviews indicated a clear breakdown of the influences that led to this decision, I submit that there were three possible considerations: legal, economic, and political.

As found in the previous section, the legal arguments for both sides of this case were quite strong. Determining the boundaries of religious rights in this country has never been an easy task for any court, making this area of law rather unclear. Indeed, Vice President Hollingsworth agrees and acknowledged that both sides had strong legal arguments (Interview with Richard Hollingsworth, 4/14/08). Therefore, even considering the possibility of losing in court, the arguments in support of the university make it difficult to attribute the decision to legal factors alone.

The severe costs of litigation represented another possible influence that led to Hall's decision. Even if the university clearly had the better legal argument and victory in

court was assured, the financial costs and amount of time required to pursue the matter would have been substantial. While the university maintains an Office of Legal Affairs, it is staffed with only about 12 attorneys that must oversee the plethora of issues that occur at such a large state university. Although it would certainly be disappointing had the university and Bill Hall made the decision not to fight for the non-discrimination policy because of these factors, the sheer cost of litigation in today's society could have arguably made fighting this case an impractical and inefficient use of the university's limited budget. Yet Vice President Hollingsworth does not believe the issue of costs fully explains Hall's actions either. Hollingsworth recognized that "the cost of taking this case all the way to the Supreme Court was one consideration that had to be on the table, but my personal experience with (Vice President) Hall suggests that he would not have let money be a 'serious' deterrent or a significant factor in his decision making" (Interview with Richard Hollingsworth, 4/14/08).

After considering the legal and economic influences on the decision, I am left with the likely result that other, more political, influences had a significant impact on the decision. Specifically, the day following the exemption announcement, October 1, another policy change was implemented; same-sex domestic partners of OSU faculty and staff became eligible to enroll in the university's health care plan (Holbrook's address to the Board of Trustees, 7/9/2004). This policy was enacted after the Board of Trustees unanimously voted to pass the change at their July 20, 2004 meeting. Although this expansion of health care benefits amounted to only a fraction of one percent of OSU's operating budget, the estimated $900,000 cost was certainly considerable (Konvalinka). The timing of these two events suggests to me that the decision to make the exemption was

very likely made under consideration of the rollout of domestic partnership benefits. Vice President Hollingsworth seemingly agreed with this possibility as he explained:

> (O)ne of the many variables VP Hall considered was the weight of this issue in the context of other diversity supportive issues under consideration at the time, including things like extension of some benefits to GLBT and straight individuals in committed long term relationships. VP Hall was a military man and I know he did not believe in winning a battle but losing the war. The degree to which this type of consideration played into his decision I cannot say with certainty. (Interview with Richard Hollingsworth, 4/14/08)

As this admission indicates, there is a high possibility that Hall's decision represented a sort of quid pro quo within the university; the university's homosexual couples gained access to important heath care benefits, but this came at the expense of re-shaping the non-discrimination policy.

Had it been the case, as I believe, that this sort of consideration drove Hall to his decision, there are certainly good arguments to support such a decision. If university resources simply did not permit both expanding health coverage and pursuing this case, the practical benefits of providing good, affordable heath care to individuals can easily be seen to outweigh the intangible effects of preserving a non-discrimination policy (especially when no gay or non-Christian student was actively seeking to join the CLS). But in terms of principle, the university's decision to allow groups like the CLS to discriminate against homosexuals represents nothing less than an affront to the concept of equality. In choosing to drop the dispute with the CLS, the university backed down from an opportunity to make constitutional arguments that could have helped make clearer the boundary between religious expression and equality. Instead the university's decision gives some

credence to Cherish Cronmiller, the co-president of the OSU OutLaws at the time, when she says "gays are unfortunately the last group on the totem pole" (Bollag).

To a large degree, the effects of the decision to revise the non-discrimination policy remain unclear. I found that a substantial majority of the students and faculty members I discussed this project with were not aware of the exemption. But in the halls of the law school, the decision is still deeply resented by some faculty. Professor Colker stated that she still is reminded of the university's decision to back down every time she walks into Drinko Hall. In her mind at least, the new non-discrimination policy ironically represents a badge of inferiority that the university has pinned to its gay community (Interview with Ruth Colker, 3/24/08).

IV. Concluding Remarks

The 2003-04 controversy regarding the Christian Legal Society and Ohio State's non-discrimination policy was a yearlong battle that pitted two firmly held beliefs against each other. At the heart of this matter was a significant question: How far can the government go to ensure that no person is unfairly discriminated against despite some individuals' religious beliefs? Based on the events at OSU and the previous case law analyzed above, the answer to this question remains elusive. The Christian Legal Society's efforts to force this issue into courts across the country have largely resulted in successes for the organization's cause (as schools like OSU and Southern Illinois University create exemptions for the group). But there is still no consensus on the Constitutional argument; while the District Court in California found that Hastings was not violating CLS' rights, the

Seventh Circuit Court of Appeals seemed to reach the opposing conclusion for SIU.[11] The Supreme Court, as of yet, has not taken on the question of this delicate balance and the American people remain decisively divided.

One discovery I found interesting in the process of researching this thesis is that hardly anyone on Ohio State's campus, both faculty and students alike, is even aware of this conflict. I say this is interesting because it is rather indicative of how little attention this issue has received. Yet, at its core I find that the debate over whether or not a state institution can enforce sexual orientation equality over religious objections is encapsulated not only in this relatively unknown conflict with the CLS but also with a national issue that is quite possibly the most divisive and heated policy consideration of the past decade: gay marriage. Surely the debate over gay marriage involves different legal arguments and moral questions that are clearly outside the purview of this thesis, but the vast discrepancy of public awareness between these two issues is noteworthy.

The degree to which this thesis has helped in answering the question of how far the government can go to ensure no one is discriminated against despite religious beliefs remains to be seen. Clearly, the events that transpired at OSU suggest that the university's position is "not too far." The exemption the school created essentially reflected the university's belief that religious beliefs trump state interests; any religious organization designed to promote beliefs may adopt any non-discrimination policy that is consistent with those beliefs. Yet in my analysis of the legal arguments and the California court's

---

[11] In reversing the District Court's denial of a preliminary injunction, the Seventh Circuit in *Christian Legal Society v. Walker* (7th Cir. 2006) found that the CLS was likely to succeed in trial on their expressive association and free speech claims.

decision in *Kane*, I reach a contrary conclusion that suggests the state can go to reasonable lengths to promote non-discrimination.

These opposing results suggest the true significance of this thesis; the degree to which a legal argument supports a position and the ability to put that position into practice do not always match. Here, I find that the university had a strong legal argument for enforcing the non-discrimination policy and a quite reasonable chance of succeeding in court. Despite this finding, it is clear from the creation of the exemption that OSU was guided by extra-legal influences as well. I suggest that the severe costs and political willpower necessary to press this issue outweighed the strong legal arguments and led to the university's decision. It is difficult to say the degree to which this conclusion holds true across the entire spectrum of legal issues. Nevertheless, regardless of one's position on whether the CLS ought to have prevailed in a legal struggle over the non-discrimination policy, it is a sad realization to accept that some of the most fundamental questions of this country's constitutional values are not always heard and answered by the legal system.

Works Cited

Legal Resources

Board of Regents of University of Wisconsin v. Southworth, 529 U.S. 217 (2000).

Boy Scouts of America v. Dale, 530 U.S. 640 (2000).

Christian Legal Society v. Holbrook (S.D. Ohio. 2004). C2-04-197.

Christian Legal Society v. Kane, 2006 U.S. Dist. LEXIS 27347 (N.D. Cal. April 17, 2006).

Christian Legal Society v. Walker, 453 F.3d 853 (7th Cir. 2006).

City of Boerne v. Flores, 521 U.S. 507 (1997).

Dolan v. City of Tigard, 512 U.S. 374 (1994).

Employment Division v. Smith, 494 U.S. 872 (1990).

Hurley v. Irish American GLIB Association, 515 U.S. 557 (1995).

Lamb's Chapel v. Center Moriches, 508 U.S. 384 (1993).

Roberts v. United States Jaycees, 468 U.S. 609 (1984)

Rosenberger v. Rector and Visitors of the University of Virginia, 515 U.S. 819 (1995).

Ryan C. Visser, *Collision Course?,* 30 Hamline L. Rev. 449 (2007).

U.S. Const. amend. I.

United States v. O'Brien, 391 U.S. 367 (1968).

Publications and Websites

"Activities & Organizations: Student Organizations." The Ohio Union . 10 May 2008 <http://www.ohiounion.osu.edu/studentorgs/orgs.asp>.

Bollag, Burton. Choosing Their Flock." The Chronicle of Higher Education 28 Jan 2005: Students, 33.

Bylaws of the Christian Legal Society Student Chapter of The Ohio State University. Adopted November 10, 2003.

Konvalinka, Adam. "Benefits to Reach Same-Sex Couples." Lantern 13 July 2004: Campus.

"Right to Exclude." Lantern 04 Oct 2004: Opinion.

The Ohio State University (October 1, 2004). “University revises guidelines for student groups”. Press release.

"Policy 1.10." Office of Human Resources . 02 Feb 2004. The Ohio State University. 23 May 2008 <http://hr.osu.edu/policy/policy110.pdf>.

"Student Organization." Moritz College of Law. 10 May 2008 <http://moritzlaw.osu.edu/students/orgs/index.php?alpha=yes>.

United States. Library of Congress. The Constitution of the United States of America: Analysis and Interpretation. Washington: GPO, 2004.

Interviews, Speeches, and Correspondence

Colker, Ruth, et al. Letter to Ohio State University Community. October 12, 2004.

Colker, Ruth. Memo to Dean Nancy Rogers. 11 Nov 2003.

Colker, Ruth. Personal interview. 24 Mar 2008.

Geidner, Christopher. Personal interview. 03 Mar 2008.

Goldberger, David. Personal interview. 09 Apr 2008.

Goldberger, David. Memo to Dean Nancy Rogers. 24 Nov 2003.

Hall, William. Council on Student Affairs. Columbus. Oct 2004.

Hammock, Brookes. "Outlaws Question." E-mail to author.19 May 2008.

Holbrook, Karen. Board of Trustees. The Ohio State University Longaberger Alumni House, Columbus, Ohio. 09 July 2004.

Hollingsworth, Richard. E-mail to author.11 Mar 2008.

Hollingsworth, Richard. E-mail interview. 14 Mar 2008.

Shumate, Kimberly. Letter to Timothy Tracey. March 2, 2004.